

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

APPELLEE:

Bernard E. Gibson Jr.

}
}
} BZA APPEAL NO. 17439
} Certificate of Occupancy Permit No. CO-102037
}

STATEMENT OF APPELLEE

Mr. Bernard E. Gibson, Jr. ("Appellee") hereby submits testimony in opposition to the appeal filed by ANC6A to Respondent's C2A Certificate of Occupancy No. CO-102037 issued by the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA").

SUMMARY OF RESPONSE

The Department of Consumer and Regulatory Affairs' Certificate of Occupancy No. CO-102037 for Appellee's property should be upheld as the use and property satisfies all conditions of a C2A restaurant and the DCRA properly interpreted and issued such permit.

DISCUSSION

- (a) Mr. Bernard E. Gibson, Jr., is the owner of Cluck U Chicken located at 1123 H Street N.E., Washington, D.C. 20002; the contact number is 202-399-3222.
- (b) Appellee hereby respectfully requests to appear and participate as a party in the hearing requesting denial of his C2A occupancy permit.
- (c) Appellee will appear as a proponent to sustain the C2A occupancy permit properly issued to him and thoroughly vetted and interpreted by DCRA.
- (d) Appellee will appear through the legal counsel of Sandy Bellamy, Esq., of International Heritage Resources, located at 1103 30th Street, N.W., Suite 500, Washington, D.C. 20007.
- (e) The following witnesses will testify on Appellee's behalf:
 - a. Mr. Bernard Gibson, Owner, Cluck-U-Chicken H Street;
 - b. Mr. Simon Hadaad, Vice-President, Cluck-U-Chicken Corporation;
 - c. Mr. Anwar Saleem, H Street Main Street Chairman and merchant;

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17439
EXHIBIT NO. 19

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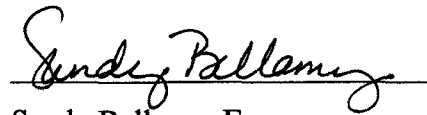
- d. Ms. Debra Jones, ANC 6A resident & patron
 - e. Ms. Lena Parks, Patron
 - f. Mr. Clifton Humphries, H Street Merchant
 - g. Mr. Robbie L. Mason, H Street Merchant
 - h. Mr. Allan Whitaker, Employee
 - i. Mr. Arnell Ward, Employee
 - j. Mr. Daymond Gibson, Employee
 - k. Ms. Rosalind Lyle, President, Parent Teachers Association, Spingarn High School
- (f) A total amount of sixty (60) minutes is requested to present Appellee's case.
- (g) Appellee should be granted party status to this appeal as he is the sole owner of the Cluck U Chicken H Street restaurant which will be adversely and irreparably affected by the actions requested by the Appellant.
- (h) Appellee owns Cluck U Chicken as a corporation.
- (i) Appellee's restaurant is within the boundaries of ANC6A.
- (j) Appellee will suffer irreparable financial harm with a minimum loss of \$7,000,000 in revenues over the life of his franchise agreement; a minimum loss of \$310,000 in property and equipment expenditures; a minimum loss of 20 employees; and a minimum loss of a \$25,000 franchise fee. In addition, the loss of Appellee's occupancy permit will have a chilling and discouraging impact upon the merchants of the H Street corridor, as they are collectively watching the outcome of this case in the face of wholesale and biased attacks by some members of ANC6A.
- (k) Appellee's interest will be uniquely affected in character by Appellant's requests as the Department of Consumer and Regulatory Affairs' Certificate of Occupancy was properly interpreted and issued pursuant to DCRA codes to satisfy all conditions of a C2A restaurant. Specifically: 1) Appellee's restaurant is a place of business where food, drinks, and refreshments are prepared and sold to customers primarily for consumption on the premises (see Exhibit A – restaurant operations letter from Cluck-U-Chicken corporate, statistics on percentage of eat-in versus carry-out, video, photos and petition to keep restaurant); 2) the facilities for carry-out are clearly subordinate to the principal use providing prepared foods for consumption on the premises (see Exhibit A – video and pictures). 11 D.C.M.R. § 199.1. Furthermore, Appellee's restaurant shall not be considered a fast-food restaurant as: 1) there is no drive-through (see Exhibit B –

exterior photos of restaurant); 2) the floor space allocated and used for customer queing self-service for carry out and on-premises consumption is less than ten percent (10%) of the total floor space on any one (1) floor *which is accessible to the public* [emphasis added] (see Exhibit C – floor plans and photos of queing space); 3) more than eighty percent (80%) of the food items are made-to-order, easily exceeding the sixty percent (60%) threshold (Exhibit D – food preparation instructions, menu, videos and photos for food preparation); and, 4) Appellee’s restaurant staff personally serve *all* of its eat-in patrons food on plates with silverware and beverages in glasses, and bus their tables after completion of their meals (Exhibit E – silverware, cup and tableware inventory, photos and video regarding food service). 11 D.C.M.R. § 199.1. Finally, Appellee’s restaurant is classified consistently with the existing establishments on the H Street corridor, **and is one of the first establishments on H Street to provide eat-in dining in at least a decade.**

THEREFORE, the Appellee respectfully requests that Board of Zoning Adjustment:

- 1) DENY Appellant's request to Revoke Certificate of Occupancy Permit No. CO-102037;
- 2) DENY Appellant's request to treat Cluck-U-Chicken's Application for a Certificate of Occupancy for a "restaurant" as one for a "fast food restaurant;"
- 3) GRANT Appellant's request to amend Cluck-U-Chicken's Application for a Certificate of Occupancy to reflect the square and lot that Cluck-U-Chicken occupies; and
- 4) DENY Appellant's request to initiate the special exception process pursuant to 11 D.C.M.R. §733.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script, reading "Sandy Bellamy", is written over a horizontal line.

Sandy Bellamy, Esq.
International Heritage Resources
1101 30th Street, N.W.
Suite 500
Washington, D.C. 20007
202-625-4321

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2006 the foregoing Response to BZA APPEAL No. 17439 was hand-delivered to:

Ms. Jerrily R. Kress, FAIA
Director
Office of Zoning
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

and sent via first-class U.S. mail, postage prepaid to:

Mr. Richard Nero, Jr.
Chief of Support Services & Quality Control
Office of Zoning
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

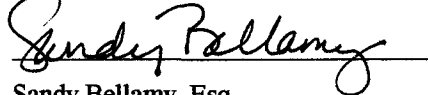
Mr. Neil Stanley
Acting Zoning Administrator
D.C. Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Room 2000
Washington, D.C. 20002

Matthew Green, Esq.
Assistant Attorney General
D.C. Department of Consumer and Regulatory Affairs
941 N. Capitol Street
Suite 9400
Washington, D.C. 20002

Stephanie Ferguson, Esq.
D.C. Department of Consumer and Regulatory Affairs
941 N. Capitol Street
Suite 9400
Washington, D.C. 20002

Mr. Richard Luna
Authorized Agent
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 200013

RESPECTFULLY SUBMITTED,



Sandy Bellamy, Esq.
International Heritage Resources
1101 30th Street, N.W.
Suite 500
Washington, D.C. 20007
202-625-4321

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CLUCK U FRANCHISE

Franchise Information

Cluck-U, Corp. is looking for suitable candidates for franchise ownership. We seek highly motivated individuals with the resources, experience and ability to operate and personally manage a high volume fast food restaurant. While it is no guarantee of success, we believe that individuals with proven management experience, who are committed to hard work and have sufficient financial resources are most likely to excel in this demanding environment.

A minimum net worth of \$190,000 is required for each Franchise to be opened. 40 % of the minimum net worth must be cash or liquid assets.

The following questionnaire is not an offer to sell or a solicitation of an offer to buy a franchise. No sale will occur until the execution of the Franchise Agreement and payment of all required fees. Your submission of this questionnaire is for information purposes only.

Neither our acceptance of the is questionnaire nor any discussions resulting therefrom constitute any commitment on our part to enter any agreement to sell a territory or a franchise.

These Franchise requirements do not constitute an offer to award a franchise. Such an offer may be made only after the issuance of a written offering circular.

The following information is requested to assist us in evaluating your qualification as a potential franchisee of Cluck-U Chicken. Responses to this questionnaire must be submitted by each person who is expected to own an interest in the franchise, if one is granted. If we believe you may have the qualifications we are looking for in a franchisee, we will send you Cluck-U Chicken materials for your review.

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Cluck-U Chicken Franchisee Form

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If you are experiencing difficulty sending your questionnaire then email us at: info@cluckuchicken.com with the problem you are experiencing.

©2005 Cluck-U, Corp.

Cluck-U-Chicken

P. O. Box 99

Beltsville, MD 20704

info@cluckuchicken.com







Reeves, Edward (DCRA)DCRA/OGC FOIA 5740
PUBLIC RECORDS

From: Buffo2, Corey (DCRA)
Sent: Tuesday, July 12, 2005 9:05 AM
To: Lewis, Theresa (DCRA)
Cc: Reeves, Edward (DCRA); Ogunneye, Faye (DCRA)
Subject: RE: Re: Taste of Jamica

I reviewed the plans for the chicken place and it had tables and represented that it would not serve in disposable containers. So there is nothing there to use to send them to BZA. But I don't believe them. We were holding the application up for further review. Their website identifies them as "an alternative fast food" place and I see pictures of disposable containers, etc. I'd ask for a business plan or the like, but that won't tell me if they will use disposable containers and tableware. A visit to another store is possible. There are also criminal charges if they misrepresent something on an application. Ed, can you put the holds out?

I did send someone out to warn Cluck U when they started cleaning up the place.

From: Lewis, Theresa (DCRA)
Sent: Tuesday, July 12, 2005 7:58 AM
To: Buffo2, Corey (DCRA)
Subject: FW: Re: Taste of Jamica
Importance: High

You should place a hold on the issuance of anything on these two properties until further investigation is completed.

Theresa D. Lewis, Chief of Staff
Office of the Director
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE Suite 9500
Washington, D.C. 20002
Office: (202) 442-8947
e-mail: Theresa.Lewis@dc.gov
Fax: (202) 442-9445

-----Original Message-----

From: Woody, Derrick (EOM)
Sent: Thursday, July 07, 2005 3:18 PM
To: Lewis, Theresa (DCRA)
Cc: Canavan, Patrick (DCRA); Cody Rice;
Subject: RE: Re: Taste of Jamica
Importance: High

Theresa ...

I hope that you are doing well.

Would you please facilitate getting the appropriate DCRA staff to respond to the inquiry and concerns below as soon as possible.

Thanks again!

Derrick Lanardo Woody
Coordinator - Great Streets Initiative

7/12/2005